Unless extended by subsequent Act of Congress, the Council shall terminate on [September 30, 2000] September 30, 2005.

33 U.S.C. § 2701

Oil Pollution Act of 1990
Pub. L. 101-380 (33 U.S.C. § 2701)

§ 1001. Definitions

For the purposes of this Act, the term–

(1) – (21) UNCHANGED

(22) "non-tank vessel" means a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, which carries oil of any kind as fuel for main propulsion and that—

(A) is a vessel of the United States; or
(B) operates on the navigable waters of the United States;

([22]23) `offshore facility' means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

([23]24) `oil' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act;

([24]25) `onshore facility' means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

([25]26) the term `Outer Continental Shelf facility' means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

([26]27) `owner or operator' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore

facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

([27]28) `person' means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body;

([28]29) `permittee' means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) or applicable State law;

([29]30) `public vessel' means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce;

([30]31) `remove' or `removal' means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

([31]32) `removal costs' means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

([32]33) `responsible party' means the following:

(A) – (F) UNCHANGED

([33]34) `Secretary' means the Secretary of the department in which the Coast Guard is operating;

([34]35) `tank vessel' means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) – (C) UNCHANGED

([35]36) `territorial seas' means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles;

([36]37) `United States' and `State' mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa,

the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States; and

([37]38) `vessel' means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

33 U.S.C. § 2752

§ 2752. Annual appropriations

(a) Required

Except as provided in subsection (b) of this section, amounts in the Fund shall be available only as provided in annual appropriation Acts.

(b) Exceptions

Subsection (a) of this section shall not apply to sections 2706(f), 2712(a)(4), or 2736 of this title, and shall not apply to an amount not to exceed [$50,000,000] $150,000,000 in any fiscal year which the President may make available from the Fund to carry out section 1321(c) of this title, as amended by this Act, and to initiate the assessment of natural resources damages required under section 2706 of this title. To the extent that such amount is not adequate, the Coast Guard may obtain an advance from the Fund for such amounts as may be necessary, up to a maximum of $100,000,000, and within 30 days shall notify Congress of the advanced amount and the facts and circumstances necessitating the advance. Amounts advanced shall be repaid to the Fund, when, and to the extent that costs are recovered by the United States from responsible parties for the discharge or substantial threat of discharge. Sums to which this subsection applies shall remain available until expended.

* * *

46 U.S.C. § 2101

§ 2101. General definitions

In this subtitle—

(1)-(34) UNCHANGED.

(35) "small passenger vessel" means a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and a vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under

section 14302 of this title as prescribed by the Secretary under section 14104 of this title –

(A) carrying more than 6 passengers, including at least one passenger for hire;

(B) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;

(C) that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or

(D) that is a submersible vessel carrying at least one passenger for hire.

(36) – (47) UNCHANGED.

(48) wing-in-ground craft means a vessel that is capable of operating completely above the surface of the water on a dynamic air cushion created by aerodynamic lift due to the ground effect between the vessel and the water's surface.

46 U.S.C. § 2110

§ 2110. Fees

(a) UNCHANGED.

[(b)(1) The Secretary shall establish a fee or charge as provided in paragraph (2) of this subsection, and collect it annually in fiscal years 1993 and 1994, from the owner or operator of each recreational vessel to which paragraph (2) of this subsection applies.

(2) The fee or charge established under paragraph (1) of this subsection is as follows:

(A) in fiscal year 1993--

(i) for vessels of more than 21 feet in length but less than 27 feet, not more than $35;

(ii) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

(iii) for vessels of at least 40 feet in length, not more than $100.

(B) in fiscal year 1994--

(i) for vessels of at least 37 feet in length but less than 40 feet, not more than $50; and

(ii) for vessels of at least 40 feet in length, not more than $100.

(3) The fee or charge established under this subsection applies only to vessels operated on the navigable waters of the United States where the Coast Guard has a presence.

(4) The fee or charge established under this subsection does not apply to a--

(A) public vessel; or

(B) vessel deemed to be a public vessel under section 827 of title 14.

(5) The Secretary shall provide to each person who pays a fee or charge under this subsection a separate document on which appears, in readily discernible print, only the following statement: ``The fees for which this document was provided was established under the Omnibus Budget Reconciliation Act of 1990. Persons paying this fee can expect no increase in the quantity, quality, or variety of services the person receives from the Coast Guard as a result of that payment."]

(b)(1)(A) Commencing in fiscal year 2003 and in each fiscal year thereafter, the Secretary shall establish, assess, and collect not more than $165 million in fiscal year 2003 and $330 million each year thereafter, in fees or charges to offset the costs of navigation services provided by the Coast Guard. The master, owner, operator, agent, or charterer of each vessel of over 1600 gross tons engaged in commercial service shall pay, prior to entering port, a navigation assistance user fee of $2,900 each time the vessel arrives at a port of the United States.

(B) This subsection does not apply to --

(1) a vessel that is owned or operated by the United States or a State or political subdivision;

(2) a fishing vessel, fish processing vessel, or fish tender vessel;

(3) a vessel restricted by its certificate of inspection to operations only on rivers, lakes, bays, and sounds; or

(4) a ferry that—

(i) has provisions only for deck passengers or vehicles, or both;

(ii) operates on a short run on a frequent schedule between two points over the most direct water route; and

(iii) provides transportation services normally provided by land-based transportation modes.

(C) The Secretary shall establish procedures for collection of fees required by this subsection.

(2) Amounts collected under this subsection shall be credited to a special fund in the U.S. Treasury and ascribed to the Coast Guard. Of the amounts collected during fiscal year 2003, $165 million shall be available to the U.S. Coast Guard's 'Operating Expenses' account without further appropriation and without fiscal year limitation, and the amounts appropriated for fiscal year 2003 from the general fund for the 'Operating Expenses' account shall be reduced by the amounts so collected up to $165 million.

(3) Five percent of the amounts collected under this subsection shall be credited to the account that incurs the cost and shall be available without further appropriation and without fiscal year limitation to pay the expenses of the Secretary incident to collecting such fees or charges.

(4) Any fee required by this subsection that is not paid shall constitute a debt to the United States. The master, owner, operator, agent or charterer who fails to pay such fee is liable to the United States Government for a civil penalty of not more than $5,000 for each day during which the fee is unpaid, up to a maximum of $25,000 per voyage. The vessel also is liable in rem for the penalty.

(5) In taking any action or implementing any regulation required or authorized under this subsection, and to more rapidly and efficiently bring such regulations into force, the Secretary shall take action or issue regulations without regard to--

(A) the notice and comment provisions of section 553 of title 5, United States Code (commonly known as the Administrative Procedure Act);

(B) chapter 35 of title 44, United States Code (commonly known as the Paperwork Reduction Act).

(c) UNCHANGED.

(d)(1) UNCHANGED.

(d)(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended. Costs of collecting the fee or charge include the reasonable administrative, accounting, personnel, contract, equipment, supply, training, and travel expenses of calculating, assessing, collecting, enforcing, reviewing, adjusting, and reporting on the fees and charges.

(e) – (k) UNCHANGED.

46 U.S.C. § 2302

§ 2302. Penalties for negligent operations and interfering with safe operation

(a) A person operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, or property of a person is liable to the United States Government for a civil penalty of not more than [$1,000] $25,000.

(b) - (d) UNCHANGED.

46 U.S.C. § 4310

§ 4310. Repair and replacement of defects

(a) – (b) UNCHANGED.

(c)(1) UNCHANGED.

(2) The notification required by subsection (b) of this section is required to be given only for a defect or failure of compliance discovered by the recreational vessel manufacturer within a reasonable time after the manufacturer has discovered the defect or failure, except that the manufacturer's duty of notification under paragraph (1)(A) and (B) of this subsection applies only to a defect or failure of compliance discovered by the manufacturer within one of the following appropriate periods:

(A) if a recreational vessel or associated equipment required by regulation to have a date of certification affixed, [5] 10 years from the date of certification.

(B) if a recreational vessel or associated equipment not required by regulation to have a date of certification affixed, [5] 10 years from the date of manufacture.

* * *

46 U.S.C. § 4311

§ Sec. 4311. Penalties and injunctions

(a) UNCHANGED.

(b) [A person violating section 4307(a)(1) of this title is liable to the United States Government for a civil penalty of not more than $2,000, except that the maximum civil penalty may be not more than $100,000 for a related series of violations.] (1) A person violating section 4307(a) of this title is liable to the United States Government for a civil penalty of not more than $250,000 for a related series of violations. When a corporation violates section [4307(a)(1)] 4307(a), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for the penalty, in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer or executive employee can demonstrate by a preponderance of the evidence that-

> [(1)] (A) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and
>
> [(2)] (B) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this clause and clause (1) of this subsection.

(2) Any person, including a director, officer, or executive employee of a corporation, knowingly and willfully violating section 4307(a) of this title, shall be fined not more than $10,000, imprisoned for not more than one year, or both.

(c) A person violating any other provision of this chapter or other regulation prescribed under this chapter is liable to the Government for a civil penalty of not more than [$1,000] $5,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

* * *

46 U.S.C. § 4502

§ 4502. Safety standards

(a) – (f) UNCHANGED

(g) In addition to the requirements described in subsection (f) of this section, and to ensure compliance with the requirements of this chapter, the Secretary may prescribe regulations requiring periodic examination of other vessels to which this chapter applies.

* * *

46 U.S.C. § 4508

§ 4508. Commercial Fishing Industry Vessel Safety Advisory Committee

(a) The Secretary shall establish a Commercial Fishing Industry Vessel Safety Advisory Committee. The Committee—

(1) - (4) UNCHANGED.

(b)(1) - (4) UNCHANGED.

(b)(5) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. These representatives shall, as appropriate, report to and advise the Committee on matters relating to vessels to which this chapter applies which are under the jurisdiction of their respective agencies. [The Secretary's designated representative shall act as executive secretary for the Committee and perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 App. U.S.C.).]

(c) UNCHANGED.

(d) UNCHANGED.

(e)(1) The Federal Advisory Committee Act [(5 U.S.C. App. 1 et seq.)] (5 U.S.C. App.) applies to the Committee, except that the Committee terminates [of September 30, 2000] on September 30, 2005.

(2) UNCHANGED.

46 U.S.C. § 4704

§ 4704. Removal of abandoned barges

(a)(1) [The Secretary may remove a barge that is abandoned after complying with the following procedures:]

The Secretary may remove an abandoned barge –

(A) that is discharging or presents a substantial threat of a discharge of oil or a hazardous substance under section 311(c)(1) of the Federal Water Pollution Control Act; and

(B) for which the Federal On-Scene Coordinator has made a determination that removal of the barge is necessary to eliminate the discharge or substantial threat of a discharge of oil or a hazardous substance.

(2) Unless the Secretary determines that immediate removal is necessary, the Secretary must comply with the following procedures before removing the abandoned barge under subsection (a):

(A) If the identity of the owner or operator can be readily determined, the Secretary shall notify the owner or operator by certified mail-

(i) that if the barge is not removed it will be removed at the owner's or operator's expense; and

(ii) of the penalty under section 4703.

(B) If the identity of the owner or operator cannot be readily determined, the Secretary shall publish an announcement that if the barge is not removed it will be removed at the owner's or operator's expense in-

(i) a notice to mariners; and

(ii) an official journal of the county in which the barge is located.

(3) [(2)] The United States and any officer or employee of the United States is not liable to an owner or operator for damages resulting from removal of an abandoned barge under this chapter.

(b) UNCHANGED.

(c)(1) The Secretary may, after providing notice under subsection (a)[(1)](2), solicit by public advertisement sealed bids for the removal of an abandoned barge.

(2) UNCHANGED.

(3) Unless the Secretary determines that immediate removal is necessary, removal of an abandoned barge may begin thirty days after the Secretary completes the procedures under subsection (a)[(1)](2).

46 U.S.C. § 6101

§ 6101. Marine casualties and reporting.

(a) - (d) UNCHANGED.

(e) A marine casualty not resulting in the death of an individual shall be classified according to the gravity of the casualty, as prescribed by regulation, giving consideration to the extent of injuries to individuals, the extent of property damage, the dangers that the casualty creates, and the size, occupation, and means of propulsion of each vessel involved.

[(e)](f)(1) This chapter applies to a marine casualty involving a United States citizen on a foreign passenger vessel operating south of 75 degrees north latitude, west of 35 degrees west longitude, and east of the International Date Line; or operating in the area south of 60 degrees south latitude that -

(A) embarks or disembarks passengers in the United States; or

(B) transports passengers traveling under any form of air and sea ticket package marketed in the United States.

(2) When there is a marine casualty described in paragraph (1) of this subsection and an investigation is conducted, the Secretary shall ensure that the investigation -

(A) is thorough and timely; and

(B) produces findings and recommendations to improve safety on passenger vessels.

(3) When there is a marine casualty described in paragraph (1) of this subsection, the Secretary may -

(A) seek a multinational investigation of the casualty under auspices of the International Maritime Organization; or

(B) conduct an investigation of the casualty under chapter 63 of this title.

(g) Consistent with international law, this part applies to a foreign vessel involved in a marine casualty or incident, as defined in the International Maritime Organization Code for the Investigation of Marine Casualties and Incidents, where the United States is a Substantially Interested State and is, or has the consent of, the Lead Investigating State under the Code.

46 U.S.C. § 7302

§ 7302. Issuing merchant mariners' documents and continuous discharge books

(a) – (e) UNCHANGED.

(f) [A] Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.

(g)(1) The Secretary may, pending receipt and review of information required under subsections (c) and (d), immediately issue an interim merchant mariner's document valid for a period not to exceed 120 days, to—

(A) an individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, who has no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo, or passengers; or

(B) an individual seeking renewal of, or qualifying for a supplemental endorsement to, a valid merchant mariner's document issued under this section.

(2) No more than one interim document may be issued to an individual under paragraph (1)(A) of this subsection.

46 U.S.C. § 7303

§ 7303. Possession and description of merchant mariners' documents

A merchant mariner's document shall be retained by the seaman to whom issued. The document shall contain the signature, notations of nationality, age, and physical description, the photograph, [the thumbprint,] and the home address of the seaman. In addition, the document shall specify the rate or ratings in which the seaman is qualified to serve.

46 U.S.C. § 7319

§ 7319. Records of merchant mariners' documents

The Secretary shall maintain records on each merchant mariner's document issued, including the name and address of the seaman to whom issued and the next of kin of the seaman. [The records are not open to general or public inspection.]

46 U.S.C. § 7702

§ 7702. Administrative procedure

(a) - (c) UNCHANGED.

(d)(1) The Secretary may temporarily, for not more than 45 days, suspend and take possession of the license, certificate of registry, or merchant mariner's document held by an individual [if, when acting under the authority of that license, certificate, or document—] if—

(A) that individual performs a safety sensitive function on a vessel, as determined by the Secretary; and

(B) there is probable cause to believe that the individual—

(i) has, while acting under the authority of that license, certificate, or document, performed the safety sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; [or]

(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982[.]; or

(iv) is a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

(2) If a license, certificate, or document is temporarily suspended under this section, an expedited hearing under subsection (a) of this section shall be held within 30 days after the temporary suspension.

46 U.S.C. § 7703

§ 7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder –

(1) when acting under the authority of that license, certificate, or document –

(A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or

(B) has committed an act of [incompetence,] misconduct, or negligence;

(2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document; [or]

(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)[.];

(4) has committed an act of incompetence; or

(5) is a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

46 U.S.C. § 7704

§ 7704. Dangerous drugs as grounds for revocation

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or merchant mariner's document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be suspended or revoked.

(c) UNCHANGED.

46 U.S.C. § 8701

§ 8701. Merchant mariners' documents required

(a) This section applies to a merchant vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title except-

(1) – (7) UNCHANGED.

(8) a mobile offshore drilling unit with respect to individuals other than crew members required by the certificate of inspection, engaged on board the unit for the sole purpose of carrying out the industrial business or function of the unit; [and]

(9) a passenger vessel not engaged in a foreign voyage with respect to individuals on board employed for a total of not more than 30 service days within a 12-month period as entertainment personnel with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo, or passengers; and";

[(9)] (10) the Secretary may prescribe the individuals required to hold a merchant mariner's document serving onboard an oil spill response vessel.

46 U.S.C. § 9307

§ 9307. Great Lakes Pilotage Advisory Committee

(a) UNCHANGED.

(b)(1) UNCHANGED.

(2) The membership of the Committee shall include—

(A) the President of an association within each of the 3 Great Lakes pilotage districts, or the President's representative;

(b)(2)(B)-(E) UNCHANGED.

(c)(1) UNCHANGED.

(2) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. [The Secretary's designated representative shall act as the executive secretary of the Committee and shall perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App.).]

(d) – (e) UNCHANGED.

46 U.S.C. § 12103

§ 12103. Certificates of documentation

(a) Except as provided in section 12123 of this title, on application by the owner of a vessel eligible for documentation, the Secretary of Transportation shall issue a certificate of documentation, or a temporary certificate of documentation, endorsed with one or more of the endorsements specified in sections 12105-12109 of this title.

* * *

46 U.S.C. § 12103a

§ 12103a. Issuance of temporary certificate of documentation by third parties

(a) The Secretary may delegate, subject to the supervision and control of the Secretary and under terms established by regulation, to private entities determined and certified by the Secretary to be qualified, the authority to issue a temporary certificate of documentation for a recreational vessel, if the applicant for the certificate of documentation meets the requirements of sections 12102 and 12103 of this title.

(b) A temporary certificate of documentation issued under section 12103(a) and subsection (a) of this section is valid for not more than 30 days from the date of issuance.

46 U.S.C. § 12110

§ 12110. Limitation on operations authorized by certificates

(a) – (c) UNCHANGED.

(d) A documented vessel, other than a vessel with only a recreational endorsement or an unmanned barge, may be placed under the command only of a citizen of the United States.

46 U.S.C. § 12120

§ 12120. Reports

To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require [owners and masters] owners, masters, and charterers of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

46 U.S.C. § 12122

§ 12122. Penalties

(a) UNCHANGED.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government–

(1)-(5) UNCHANGED.

(6) when a documented vessel, other than a vessel with only a recreational endorsement or an unmanned barge, is placed under the command of a person not a citizen of the United States.

(c) UNCHANGED.

46 U.S.C. § 13110

§ 13110. National Boating Safety Advisory Council

(a) – (d) UNCHANGED.

(e) The Council shall terminate on [September 30, 2000] September 30, 2005.

46 U.S.C. § 31321

§ 31321. Filing, recording, and discharge

(a)(1) – (3) No change.

(4)[(A)] A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

[(B) A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing unless the original instrument is provided to the Secretary within that 10-day period.]

46 U.S.C. App. § 1903

§1903. Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels

(a) - (c)(1)(C) UNCHANGED.

(D) a vessel located within the customs waters of the United States; [and]

(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the [United States.] United States; and

(F) a vessel located in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999, and (i) is entering the United

States, (ii) has departed the United States, or (iii) is a hovering vessel as defined in 19 U.S.C. 1401(k).

(c)(2)-(j) UNCHANGED.

46 U.S.C. App. § 1904

§ 1904. Seizure or forfeiture of property

(a) Any property described in section 881(a) of Title 21 that is used or intended for use to commit, or to facilitate the commission of, an offense under this chapter shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 881 of Title 21.

(b) Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under this chapter, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, inter alia, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of an offense under this chapter:

(1) the construction or adaptation of the vessel in a manner that facilitates smuggling, including:

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment which is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law, or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used in order to camouflage the vessel, to avoid detection;

(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport;

(2) the presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel;

(3) the presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose;

(4) the operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation, and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities;

(5) the failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when so hailed;

(6) the declaration to government authority of apparently false information about the vessel, crew, or voyage, or the failure to identify the vessel by name or country of registration when requested to do so by government authority;

(7) the presence of controlled substance residue on the vessel, on an item aboard the vessel, or on a person aboard the vessel, of a quantity or other nature which reasonably indicates manufacturing or distribution activity;

(8) the use of petroleum products or other substances on the vessel to evade the detection of controlled substance residue; and

(9) the presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

Enhanced Border Security and Visa Entry Reform Act of 2002
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SEC. 2. DEFINITIONS.

In this Act:

(1) – (3) UNCHANGED

(4) FEDERAL LAW ENFORCEMENT AGENCIES- The term 'Federal law enforcement agencies' means the following:

(A) The United States Secret Service.
(B) The Drug Enforcement Administration.
(C) The Federal Bureau of Investigation.
(D) The Immigration and Naturalization Service.
(E) The United States Marshall Service.
(F) The Naval Criminal Investigative Service.
(G) [The Coastal Security Service.] <u>The United States Coast Guard.</u>
(H) The Diplomatic Security Service.
(I) The United States Postal Inspection Service.
(J) The Bureau of Alcohol, Tobacco, and Firearms.
(K) The United States Customs Service.
(L) The National Park Service.

* * *

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE.

The first section titles this Act as the "Coast Guard Authorization Act of 2002".

TITLE I – AUTHORIZATION

SECTION 101. AUTHORIZATION OF APPROPRIATIONS.

This section would authorize funds for fiscal 2003 at the following levels:

Appropriation	Thousands of Dollars
Operations & Maintenance	$4,635,268.
AC&I	735,846.
RDT&E	23,106.
Retired Pay	935,000.
Environmental Compliance	17,286.
Alteration of Bridges	–0-.

SECTION 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

This section would authorize a Coast Guard end-of-year strength of 41,000 active duty military personnel for fiscal year 2003. The authorized strength does not include members of the Ready Reserve called to active duty for special or emergency augmentation of regular Coast Guard forces for periods of 180 days or less. This section also would authorize average military training student loads for fiscal year 2003 as follows:

Training	Student Years
Recruit/Special	2,250
Flight	125
Professional	300
Officer	1,150

SECTION 103. CARIBBEAN SUPPORT TENDER.

In chapter 4, title V, division B of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), Congress appropriated $16.3

million Operations and Maintenance funding for counter drug activities, $4 million of which is specifically allocated to establish and operate the Caribbean International Support Tender (CST), which is used "to train and support foreign coast guards in the Caribbean region." The CST's primary mission is training and technical assistance for Caribbean regional maritime services, providing a full-time resource to complement and reinforce the technical and professional training exported to the region, including Maritime Law Enforcement, Search and Rescue, and Marine Environmental Protection. In addition to assisting Caribbean nations to become self-sufficient in these areas, the CST also enhances U.S. efforts to stop drug trafficking and illegal immigration in the region by assisting participating nations in achieving higher, sustainable levels of operational readiness for interdiction operations.

The authority to operate the CST, derived from the appropriation, will expire at the end of FY 2001. This proposal would provide permanent statutory authorization for the Coast Guard to operate the CST as a mobile, ship-based support and training platform as a means of improving the operational capabilities and effectiveness of Caribbean nations' maritime forces.

This proposal also would authorize the Coast Guard to provide medical and dental care to foreign military CST crewmembers and their dependents. This authority would be consistent with the current Department of Defense authority to provide medical and dental care to foreign military personnel found in 10 U.S.C. § 2559 and 10 U.S.C. § 1074. The Coast Guard is seeking this authority to ensure that it can adequately meet the medical needs of foreign military CST personnel and their dependents.

TITLE II – COAST GUARD PERSONNEL, FINANCIAL, AND PROPERTY MANAGEMENT

SECTION 201. ENLISTED MEMBER CRITICAL SKILL TRAINING BONUS.

Unlike the DoD services, the Coast Guard does not routinely send new accessions to specialty ("A" school) training upon completion of basic training since many enlistees do not know what specialty to choose for a career. Instead, most basic training graduates are sent directly to their first assignment where they are exposed to various specialties to help them decide which career path to choose. They then attend an "A" school for formal specialty training. This gap between enlistment and attendance at an "A" school disqualifies many Coast Guard enlisted members from current authorized incentive bonuses because of restrictions in those bonuses.

While there are Coast Guard enlistees who designate a specialty when they are accessed, the balance cannot be offered an enlistment bonus (37 USC §309) as an incentive to join, because the enlistment bonus requires the member to access in a specified specialty. The Coast Guard is also unable to offer a retention bonus for critical skill specialties (37 U.S.C. §323) because it requires the member to complete or nearly complete their initial obligation before the bonus can be paid. The result is that it is very difficult to fill

personnel requirements in certain critical specialties because the Coast Guard is unable to offer an incentive bonus to those members who have already enlisted but not yet chosen a specialty.

The Coast Guard has shortages of enlisted members on active duty in certain critical skills, such as Electricians Mate, Electronics Technician, Fire Control Technician, Food Service Specialist, Machinery Technician, Quartermaster, Storekeeper and Telecommunications Specialist. This section would allow the Coast Guard to offer an incentive bonus to encourage enlisted members, who have already enlisted, to enter certain critical skill specialties.

SECTION 202. RESERVE STUDENT PRE-COMMISSIONING ASSISTANCE PROGRAM.

Currently, the Coast Guard is limited in its officer accession sources to graduates of the Coast Guard Academy and Officer Candidate School, and to the Direct Commission Officer Program. It does not have any program similar to the Department of Defense Reserve Officer Training Corps (ROTC) program, nor does it have the infrastructure to support a ROTC program. Due to high current officer attrition rates, however, and due to attrition rates that are anticipated to be even higher, some form of additional officer accession source is necessary.

This proposal would authorize the Coast Guard to adopt a program similar to that which has proven to be highly successful for the Marine Corps. Under the program, the Coast Guard would be authorized to pay (within a prescribed limit), an individual's tuition and certain other costs in exchange for obligated service. The individual would enlist in the Coast Guard Reserve in an inactive duty status while attending college or graduate school and, upon successful completion of the program, would be offered a commission as an officer in the Coast Guard Reserve to serve on active duty. The active duty term would be up to five years of obligated active service as well as three years inactive service. The obligation could be adjusted depending on how many years of tuition were provided. If the individual completes the program and refuses to accept a commission, or fails to complete the program, he or she would serve an active duty obligation as an enlisted member of the Coast Guard Reserve for up to four years. If the individual left the program, failed to complete the active duty obligation because of misconduct, or violated any term of the financial assistance agreement, he or she would be required to reimburse the United States for the financial assistance received. If the individual were to become physically unqualified for service, the Secretary could waive the obligated service.

The program would provide up to $25,000 of financial assistance per year per individual. The Coast Guard expects that there would be 20 to 25 individuals enrolled in the program.

SECTION 203. ACCELERATED PROMOTION OF CERTAIN COAST GUARD OFFICERS.

Section 271 of title 14, United States Code, requires that officers recommended for promotion by a selection board and approved by the Secretary be placed on the selection list in order of their precedence on the active duty promotion list. Due to this requirement, the only way officers may presently advance their precedence relative to their peers on the active duty promotion list (ADPL) is through selection from below the identified promotion zone. Under current law, each below-zone selection (also commonly referred to as "deep selection") results in the deep-selected officer being added to the bottom of the selection list – effectively advancing him or her on the ADPL. This amendment would allow selection boards to recommend exceptionally high-performing officers for advancement in precedence within their respective selection lists.

Deep selection of an officer from below the promotion zone necessarily precludes the selection for promotion of an officer in the promotion zone. Since the current opportunities for selection for promotion to the grades of lieutenant commander, commander and captain are extremely competitive, selection boards have been reluctant to select officers from below the promotion zone because of the negative impact of "passing over" other highly qualified officers who are within the promotion zone.

In essence, this amendment allows for "deep selection" within a promotion zone, preserving the positive aspects of below-zone selection without the negative impacts. This tool would provide a significant performance incentive for the officer corps, and allow the Coast Guard to advance the most highly motivated and strongest performing officers to positions commensurate with their ability. Officers "accelerated" in precedence might also enjoy enhanced monetary rewards, if their position on the ADPL is substantially advanced. The delay in promotion for the remaining officers on the ADPL is likely to be negligible.

No additional budget resources would be required.

SECTION 204. RESERVE OFFICER PROMOTIONS.

This proposal makes technical amendments to fully implement changes made to sections 729(d) and 731 of title 14, United States Code, by the National Defense Authorization Act for Fiscal Year 2001, P.L. 106-398.

Section 502 of P.L. 106-398 amended sections 729(d) and 731 of title 14, United States Code, to authorize the Coast Guard to depart from a running mate system used in determining Reserve officer promotions. Section 729(i) and 736(a) provide methods for determining the date a promotion becomes effective, and for establishing date of rank, but both are tied to the running mate system. If the Coast Guard departs from the running mate system, as authorized by P.L. 106-398, there will be no method for determining the date a promotion becomes effective, and for establishing date of rank.

The amendments proposed would prescribe a method for determining the date a promotion becomes effective and for establishing the date of rank in the event the Coast Guard implements the change authorized by section 502 of P.L. 106-398. Since eligibility for promotion under section 731 is tied to the running mate system, conforming provisions are necessary to establish how eligibility would be determined when the running mate system is not used.

SEC. 205. REGULAR LIEUTENANT COMMANDERS AND COMMANDERS; CONTINUATION UPON FAILURE OF SELECTION FOR PROMOTION.

This proposal would authorize the Coast Guard to continue, through board action, Commanders (O-5) and Lieutenant Commanders (O-4) scheduled to retire due to failure of selection for promotion. The Coast Guard would use the same process to implement this proposal as it currently uses for Lieutenant (O-3) continuation. The decision to use the tool would be made by the Commandant. If the Commandant decides to use the tool, then both the O-5 and O-6 promotion boards would be provided with a separate precept for continuation once they had completed their recommendations for promotion. The continuation board would then select officers from the eligible pool of officers for continuation. Once the Secretary approves the board, these selected officers would be offered contracts of a duration to meet the needs of the Service.

Currently, the Coast Guard has no mechanism for retaining on active duty O-4's and O-5's who are scheduled to retire for failure to be selected for promotion. Due to competition in the civilian sector for skilled personnel, the Coast Guard foresees an inability to fill critical skill positions solely through the recall of retired officers. The authorization to retain fully skilled personnel, who due to non-selection for promotion on a best qualified basis are required by current law to be mandatorily retired, would facilitate the Coast Guard's ability to satisfy critical skill requirements. This proposal would authorize retention on active duty of O-4's to 24 years of active commissioned service, and O-5's to 26 years of active commissioned service.

The Coast Guard is limited to recalling retired officers to active duty to fill needed skills. In the last two years, for example, the Coast Guard has gone to within one officer of the legal limit on recalling retired O-4's. Approximately one-half of these officers are pilots, a skill with critical shortages in the Coast Guard. Continuation is advantageous to the officer because the officer remains eligible for promotion and receives full pay raises (retired recalls must be on active duty for at least two years to receive the same pay raises). Continuation, rather than retired recall, is advantageous to the Coast Guard because it allows the Coast Guard to better target its officers, as well as being more attractive to the officer and therefore easier to retain the officer.

This proposal would provide the Coast Guard with authority similar to that available to the Department of Defense services. Currently, the Coast Guard and the DoD services all have the authority to continue O-3's through board action to twenty years of active service. The DoD services have the authority to continue O-4's up to 24 years of service.

Under the Defense Officer Personnel Management Act (DOPMA) (affecting DoD), O-5's are retained to 28 years and O-6's to 30 years of active service unless earlier retired by a selective early retirement board. The Coast Guard does not have authority to retain either O-4's or O-5's. This proposal would provide the Coast Guard with the same authority for O-4's as that provided the DoD services in 10 U.S.C. §637. Adoption of DoD provisions for O-5's and O-6's could prove troublesome for the Coast Guard, however, given the Coast Guard's current officer structure, and would require substantive legal and cultural changes. Rather than provide for selective early retirement, the Coast Guard seeks to provide O-5's with continuation up to 26 years of active commissioned service, rather than the 28 years the DoD services provide, due to our Captain (O-6) continuation process.

The cost to the Coast Guard would be a small increase for additional board activity, and a small increase in the retired pay for the officers that remain on active duty longer than they would have. The return on investment, however, through the retention of experienced officers and the reduction in the number of officer accessions required to otherwise fill billets, should offset the additional cost.

SECTION 206. CONTINUATION ON ACTIVE DUTY BEYOND THIRTY YEARS.

The Coast Guard is experiencing a loss of officers with valuable skills and experience due to mandatory retirement. Elsewhere in the bill, a proposal has been made to correct this loss among Lieutenant Commanders and Commanders by allowing a selection board to offer continuation to 24 years and 26 years of active commissioned service, respectively. The Coast Guard is also losing Captains with unique ability who are forced to retire at thirty years of active commissioned service. There has been a measurable upward trend in the number of such officers who may remain on active duty if offered continuation beyond thirty years. Hopefully, a significant number would stay on active duty. This would provide the Coast Guard with a significant pool of experienced and skilled officers to fill its work force needs.

This proposal would permit the Coast Guard to offer to Captains who would otherwise be forced to retire at thirty years the opportunity to continue on active duty. The service tenure would at least match that of flag officers already allowed in section 290 of title 14. Increasing the tenure of officers is consistent with the recommendations of the DoD Officer Personnel Structure for the 21st Century Study Group.

Captains continued under this provision would remain eligible for promotion , and would be subject to the number and distribution limitations of section 42 of title 14.

The mechanism for Captain continuation boards is already in place under section 289 of title 14. Therefore the cost to the Coast Guard of this proposal would be a negligible increase in the retired pay for the officers that remain on active duty, since they would have already achieved the maximum allowable retired pay. For almost no cost, there

would be a benefit to the Coast Guard through the retention of experienced officers, and a reduction in the need for officer accessions.

SECTION 207. ALIGN COAST GUARD SEVERANCE PAY AND REVOCATION OF COMMISSION AUTHORITY WITH DEPARTMENT OF DEFENSE AUTHORITY.

This proposal would revise the Coast Guard severance pay provisions to incorporate, into title 14 of the United States Code, the Department of Defense separation pay computations. Severance pay is paid to officers who twice fail of selection for promotion to the next higher grade and, in some circumstances, to other officers who are separated from the service following boards of review. This proposal addresses two problems related to the Coast Guard severance pay system. First, it eliminates inequities between treatment of Regular officers and all other members of the Coast Guard. Second, it eliminates a recent trend in which officers request not to be selected for promotion so as to qualify for severance pay. This proposal also allows the Secretary to revoke the commission of an officer with up to five years of commissioned service, rather than three years, to achieve parity with the DoD services. The proposal would take effect four years after enactment to "grandfather" currently commissioned officers while balancing the Coast Guard's need to implement the proposal.

Adopting DoD Separation Pay

The Coast Guard currently computes severance pay for Regular commissioned officers and Regular warrant officers, but relies on DoD separation pay computations for Reserve commissioned officers and Reserve warrant officers. The Coast Guard proposes to adopt the DoD separation pay provisions from section 1174 of title 10 United States Code, for uniform treatment of all of its members. This proposal amends sections 283, 286, 286a, and 327 of title 14 in order to eliminate perceived and actual inequities between the treatment of officers from varying commission sources. Some inequities are as basic as a higher rate of pay for severance pay for Regular Coast Guard officers than the DoD separation pay that DOD officers and Coast Guard Reserve Officers receive. Another is that a Reserve officer does not become eligible for separation pay until after six years of continuous active service, while Regular officers are eligible for severance pay with no time in service requirement. It is possible that a Reserve officer would not reach six years of continuous active service before being twice nonselected for promotion to Lieutenant and therefore receive no separation pay at all on the same nonselection for promotion for which the Regular officer would receive severance pay. It is anticipated that this change to the severance pay provisions will save the United States approximately $1 million per year.

Eliminating Severance Pay for Officers Who Request Nonselection for Promotion

The Coast Guard has recently noted a practice of some officers writing to the promotion board requesting not to be promoted or writing to the Secretary seeking removal from the

list of those recommended for promotion. The goal of these communications is to achieve two failures of selection for promotion so that the officer becomes eligible for separation pay. The DoD services noted the same trend and adopted a provision to address the problem at section 1174 of title 10. The Coast Guard proposes to address the problem by expressly prohibiting, in section 286(d) of title 14, separation pay for any officer who has requested nonselection for promotion, or who has requested removal from the list of selectees once selected.

Revocation of Commission.

The DoD services currently have the ability, in section 630 of title 10, United States Code, to revoke the commission of a Regular officer during the first five years of active commissioned service. The Coast Guard is restricted to revoking Regular officer commissions during the first three years of active commissioned service. This proposal would provide the Coast Guard, by amending section 281 of title 14, United States Code, five years to revoke the commission of Regular officers and permit alignment with DoD revocation authority.

SEC. 208. AMEND LIMITS TO THE NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS

The number and distribution of commissioned officers in the Coast Guard is statutorily controlled by section 42 of title 14, United States Code. Currently, the overall number of officers cannot exceed 6,200. Increased homeland security requirements, however, are expected to drive up the officer needs of the Coast Guard by 17%. With a current officer corps of approximately 5600 officers, an additional 900 officers for homeland security missions will require a change to the officer ceiling in section 42, United States Code. A new ceiling of 7100 will accommodate the homeland security increase, and retain the margin that the existing 6200 ceiling provides over the actual 5600 officer strength. In addition, in order to provide flexibility in time of war or national emergency, this section would permit the number of officers to exceed the ceiling, and would authorize the Secretary of the department in which the Coast Guard is operating to designate the number of officers.

The number of Commanders and Lieutenant Commanders is restricted by section 42 of title 10, United States Code, to 12 percent and 18 percent, respectively, of the number of officers in the Coast Guard. These levels are lower than those of comparable Department of Defense ("DoD") Armed Forces and are having a negative impact on the Coast Guard's officer management program and on officer retention. This proposal would permit an increase in the percentage of Commanders and Lieutenant Commanders in the Coast Guard to an average percentage level comparable to those authorized for the other Armed Forces. It would allow the Coast Guard to fill billets with officers in the appropriate grade, would permit officers that have already been selected for promotion to actually be promoted, and provides greater parity with the other Armed Forces.

The increased need for officers with specialized skills, such as engineers, aviators, and lawyers, has resulted in junior officers filling billets that actually require more senior officers to properly perform the work entailed by the billet. As the number of specialty demand billets grows, it becomes increasingly difficult to fill the billets at the appropriate grade level because of the statutory limit on the percentage of Commanders and Lieutenant Commanders. In addition, the limitations have resulted in officers that have already been selected for promotion having to wait up to two years before they can actually be promoted.

Section 523 of title 10, United States Code, provides a "sliding scale" for the officer composition of DoD Armed Forces at the O-4, O-5, and O-6 levels. Each service has a different scale reflecting the unique needs of that service, but each reflects an increasing percentage of senior officers as the total number of officers shrinks in order to maintain core proficiency and leadership for the service. For example, at the 51,000 officer level, the Navy is restricted to 12.9% for O-5 and 20.7% for O-4, while at the 30,000 officer level it is restricted to 16.7% and 24% respectively. Even the Marine Corps, with its significantly different mission, is authorized a distribution of 14.8% for O-5 and 25% for O-4 at the 10,000 officer level. The Coast Guard officer strength of approximately 5200 is too small for any of the DoD scales, but raising its distribution to 15% for O-5 and 22% for O-4 more closely aligns the Coast Guard with the average FY01 officer distributions of the other Armed Forces.

SECTION 209. COAST GUARD BAND DIRECTOR RANK.

This proposal assures that the Coast Guard Band Director will be eligible to attain a rank equal to that of the directors of the other Armed Forces service bands, who are all eligible to attain the officer grade level of 0-6. This amendment raises the current ceiling on the Coast Guard Band Director's rank, placing the director on an equal footing with his or her peers. It also corrects any possible public misperception that the Coast Guard Band is subordinate to the Army, Navy, Air Force or Marine Corps Bands. The Coast Guard Band is a highly visible representative of the U.S. Coast Guard.

Like its counterparts in the other Services, the Coast Guard Band is well known for its musical accomplishments and is widely sought after for public engagements and ceremonies. The Coast Guard Band plays at important special events like the recent ceremonies dedicating the *Women in Military Service for America Memorial*, as well as recurring national events like the annual lighting of the national Christmas tree.

Budgetary and personnel impacts from this proposal are minimal. This proposal would require no additional personnel. If the Band Director is promoted to captain, the total additional cost (based on the current military pay scale), spread over the course of the first five years following promotion, would be $66,129.60.

SECTION 210. COMPENSATORY ABSENCE FOR ISOLATED DUTY.

This amendment would ensure that compensatory absence is extended to all personnel assigned to the most isolated and demanding Coast Guard stations, regardless of the unit's mission. Under current legislation, compensatory absence is authorized for Coast Guard personnel serving in lightships, or stationed at lighthouses and other isolated aids to navigation. The law provides no allowance for other equally isolated and arduous duty assignments, where personnel are assigned to an unaccompanied and restricted duty one year tour, such as a marine safety detachment in a remote part of Alaska.

The text of 14 U.S.C. 511 indicates that the provision was meant to address the demands on morale and mental health of "confinement because of isolation or...long periods of continuous duty" and encompassed each mission area where such conditions existed at the time of passage in 1955. The types of isolated units that exist today, could not have been envisioned when the law was originally drafted. Presently, Coast Guard members serve at units under the exact conditions contemplated by section 511, but are excluded because they are not assigned to a type of unit specifically listed. This amendment would ensure that compensatory absences may be extended to all personnel assigned to duty stations that would otherwise qualify.

This amendment also eliminates the gender specific reference to the Secretary of Transportation.

SECTION 211. EXTENSION OF COAST GUARD HOUSING AUTHORITIES.

Section 208 of the Coast Guard Authorization Act of 1996 provided the Coast Guard with the legal authorities to encourage private sector participation in the acquisition or construction of Coast Guard housing on or near Coast Guard installations. These authorities include the guarantee of loans, entry into limited partnerships with non-governmental entities, and conveying or leasing property. The proceeds from property conveyed or leased under these new authorities are deposited into a Coast Guard Housing Fund, also established by Section 208, and may be used to fund mission essential housing, including unaccompanied personnel housing. These authorities are codified at 14 U.S.C. §§ 680-689.

This proposal would extend the present Coast Guard housing authorities until October 1, 2006. Under current law, these authorities expire on October 1, 2001.

Following a delay in implementing this program due to a lack of funding, the Coast Guard has made progress in measuring and evaluating its housing stock. A Coast Guard report to Congress spells out the specific pilot projects proposed, but extension of the current housing authority is required to execute and bring these projects to completion.

Extension of these authorities is essential if the Coast Guard is to realize the benefits of the 1996 enactment.

SECTION 212. EXPANSION OF COAST GUARD HOUSING AUTHORITIES.

In 1996 the Congress enacted a broad set of authorities for the Department of Defense to use in the Military Housing Privatization Initiative (MHPI). The existing Coast Guard Housing Authorities are more limited, however, when compared to the authorities available to the Department of Defense. This proposal would expand the Coast Guard's existing authorities by adopting a specific housing authority currently available to the Department of Defense, allowing the Coast Guard to more readily partner with the other Services and to provide greater flexibility to fund privatization projects. The Coast Guard seeks to adopt authority currently available to the Department of Defense. Identical to authority found in 10 U.S.C. 2873, this authority would allow the Coast Guard to provide direct loans or loan guarantees for the construction of military housing.

SECTION 213. PROPERTY OWNED BY AUXILIARY UNITS AND DEDICATED SOLELY FOR AUXILIARY USE.

Under current law, it is unclear whether unincorporated elements of the Auxiliary may own property. These amendments clarify the intent that Auxiliary elements and units may own personal property in order to carry out the purpose of the Auxiliary as set forth in Section 822.

Property owned by Auxiliarists and Auxiliary organizational "elements" (such as the national board, districts, regions, divisions, and flotillas) is not considered Federal property. However, while the Auxiliary-owned personal property is being used by an Auxiliarist in the performance of official duties, the property *is* considered Federal property for liability purposes to protect the Auxiliary (the property's owner/operator). Motorboats and yachts, aircraft, and radio stations are specifically deemed, by statute, to be *public* vessels, aircraft, and radio stations "while assigned to authorized Coast Guard duty." Therefore, as to vessels, aircraft, and radio stations, the Auxiliary (owner/operator) is entitled not only to liability protection, but also to expense reimbursement for use of the personal property on behalf of the Coast Guard — and even repair or replacement— under appropriate circumstances, with approval of the Commandant and subject to the availability of funds.

When the Auxiliary statutes were overhauled in 1996, this scheme was retained. However, organizational elements of the Auxiliary (districts, regions, divisions, flotillas, etc.) are increasingly receiving donations of property — vessels, trailers, fax machines, real property, etc. In some cases, the elements are incorporated. In others, they are unincorporated. The Coast Guard is concerned about the liability of individual members (whether or not a given unit is incorporated) that could arise if Auxiliary Unit-owned personal property causes personal injury or property damage while being *available* for Auxiliary use, but not actually *in* use. An example would be a stored vessel owned by a flotilla that catches fire and damages other vessels located nearby.

This proposal, if enacted, would provide that real and personal property owned by a unit of the Auxiliary shall be considered federal property for liability purposes at all times unless the property is being used outside the scope of the Auxiliary mission under Section 822 or this Title. The property would not be considered Federal property for any other purpose or other law other than as contained in the existing statutes pertaining to the Auxiliary (Public Vessel Act, Suits in Admiralty Act, Vessels of the Coast Guard or Coast Guard Aircraft). The proposal also provides reimbursement of operation, maintenance, repair or replacement of the property may be made from appropriated funds to the same extent as other property being used by the Auxiliary for Coast Guard Service, with approval of the Commandant and subject to the availability of funds.

SECTION 214. COAST GUARD AUXILIARY UNITS AS INSTRUMENTALITIES OF THE UNITED STATES FOR TAXATION PURPOSES.

When the Auxiliary statutes were overhauled in 1996, Auxiliary organization elements of the Auxiliary were statutorily deemed "instrumentalities of the United States" for tort liability purposes only, if unincorporated. The statutes are silent as to the status of the Auxiliary itself, and its various organizational elements vis-à-vis Federal and State income, property, sales, or other taxation.

The Auxiliary has received an IRS determination that the "Coast Guard Auxiliary" is tax-exempt. However, as a result of the amendment of the Auxiliary statutes in 1996 in which the Auxiliary was deemed to be an instrumentality of the United States only for specific purposes, the tax-exempt status of the Auxiliary was not addressed. As a result, it may appear that the 1996 Act changed the tax-exempt status of the Auxiliary which was entirely inadvertent and not an intended result. Therefore, this section clarifies that the tax-exempt status of the Auxiliary was not meant to change and that the Auxiliary and each of its organizational elements and units is tax-exempt for all purposes to the same extent that it has enjoyed under the Internal Revenue Service Ruling.

This proposal would further provide that organizational elements and units of the Auxiliary "shall be considered instrumentalities and a political subdivision of the United States for taxation purposes and those purposes as provided under Title 4, section 107, USC." Such a provision would allow donations to the Auxiliary to be deductible, and would provide a basis for exempting Auxiliary units from having to pay State property taxes on the real and personal property they own and levy and remit state sales tax for any goods and services that it may sell.

SECTION 215. PAYMENT OF DEATH GRATUITIES ON BEHALF OF COAST GUARD AUXILIARISTS.

The Coast Guard Auxiliary is a volunteer organization whose sole function is to support the operations and activities of the Coast Guard. Authorizing legislation for the Auxiliary dates back to World War II, when the Auxiliary conducted anti-submarine patrols and served as a predecessor to the current Coast Guard Reserve. Each year, the 34,000 volunteer members of the Coast Guard Auxiliary save an average of 365 lives and over $4 million in property. Out of personal commitment, these volunteers devote over 1,000,000 hours of their own time to conduct Safety Patrols, Vessel Safety Checks, and Courtesy Marine Examinations, engage in Search and Rescue operations, and augment the Coast Guard and Coast Guard Reserve by providing a wide range of operational and administrative support, often in dangerous conditions. Every day, without fail and without pay, volunteer members of the Coast Guard Auxiliary place themselves and their privately-owned vessels and aircraft at risk while conducting Coast Guard missions.

Under current law, if an Auxiliarist dies in the line of duty, the Auxiliarist's beneficiaries are entitled to receive the same death benefits paid to temporary members of the Coast Guard Reserve, who in turn are entitled to the same death benefits available to beneficiaries of civilian employees of the United States (with some adjustments to the percentages those beneficiaries would receive), unless the workmen's compensation law of a State, territory, or another jurisdiction provides coverage because of a concurrent employment status. These death benefits include monthly compensation equal to a percentage of monthly pay, and funeral and certain transportation expenses. For the purpose of calculating benefits, Auxiliarists are considered to have had monthly pay equivalent to the minimum rate of basic pay in effect for grade GS-9 of the General Schedule.

In 1997, a law was enacted that authorizes the head of any department or agency to pay a death gratuity of up to $10,000 (which includes $1000 paid under other authority) to the personal representative of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty. *See*, Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104-208, Sec. 651. This change brought the rest of the federal government in line with previous authority applicable to employees of the Department of the Interior and related agencies.

However, the circumstances under which Auxiliary members may be considered Federal civilian employees are narrowly circumscribed. Under Section 823a of title 14, Auxiliarists are considered civilian employees only for limited purposes, which currently do not include calculating death gratuities for the purposes of Pub. L. 104-208. This proposal would amend Section 823a to authorize the payment of death gratuities to personal representatives of Coast Guard Auxiliarists to the same extent that death gratuities are paid on behalf of federal employees.

Given the high level of personal commitment of these volunteers, and the benefit to the Coast Guard and the public derived from their selfless contributions, it is fitting that their personal representatives should receive this increased benefit, which is on a par with benefits payable for other federal employees, when an Auxiliary member loses his or her life in service community and country.

SECTION 216. CLARIFICATION OF COAST GUARD EXCHANGE SYSTEM EXEMPTION.

The Randolph-Sheppard Act (20 U.S.C. §107 et. seq.) authorizes blind persons licensed under the Act to operate vending facilities on Federal property. If there is no blind licensee operating the vending facility, then vending machine income obtained from the operation of vending machines on Federal property goes to the State agency in whose State the Federal property is located, for the uses designated in the Act.

There is an exemption in the Act for vending facilities within retail sales outlets operated under exchange or ships' stores systems authorized under Title 10, United States Code. All of the military services' exchange systems are authorized under Title 10, except the Coast Guard exchange system, which is instead authorized under Title 14. It appears that the Coast Guard exchange system was inadvertently omitted from the Act's military exemption by the failure to reference exchanges authorized under Title 14.

The military exclusion was added to the Act in 1974. The legislative history reflects that an exclusion was added for "military exchanges", as well as the Veterans Canteen Service and certain other facilities. Rehabilitation Act Amendments of 1974, S. Rep. No. 1297, 93rd Cong., 2d Sess., reprinted in 1974 U.S.C.C.A.N. 6419. Rather than reference the individual services, the exclusion was accomplished by reference to the Title authorizing the DoD military service exchange systems. The Committee Report reflects that the military exchanges and the Veterans Canteen Service were excluded from the Act because they operate under specific statutory authorization. H.R. Comm. Rep. No. 1048, 93rd Cong., 2d Sess., at 24 (1974). There is no indication that there was any intent to single out the Coast Guard as the sole military service not included within the exclusion. The Coast Guard is one of the Armed Forces of the United States. 10 U.S.C. §101(4). Indeed, it operates under the Department of the Navy in times of national emergency and war, and military operations are among the Coast Guard's many missions. 14 U.S.C. §2.

Income generated by vending facilities operated under the Coast Guard exchange and ships' stores systems currently is used to support non-appropriated fund activities, including morale, well-being, and recreation programs for uniformed members of the Coast Guard. It is also used for exchange facility construction, renovation, expansion, and maintenance. This proposal would provide parity with the Department of Defense exchange systems and allow the Coast Guard to continue to use funds generated by its vending facilities to support its non-appropriated fund activities by expressly excluding it from the requirements of the Randolph-Sheppard Act.

SECTION 217. LONG-TERM LEASE AUTHORITY FOR LIGHTHOUSE PROPERTY.

This proposal would authorize the Coast Guard to lease lighthouse properties under the

administrative control of the Coast Guard for no monetary consideration, for terms not to exceed thirty years. The consideration for the lease may include improvement, alteration, restoration, rehabilitation, repair, and maintenance of the lighthouse property. This proposal, if enacted, would provide a statutory exception to Section 321 of chapter 314 of the Act of June 30, 1932 (40 U.S.C. § 303b) for leases of Coast Guard controlled lighthouse properties. Section 303b of Title 40, United States Code, requires monetary consideration for such leases and prohibits any lease provision that requires, as part of the consideration, the lessee to alter, repair or improve the lighthouse property.

In 1992, the Coast Guard submitted the United States Coast Guard Lighthouse Policy Review report to Congress, recommending that the Coast Guard pursue long-term lease agreements, for no monetary consideration. Under this recommendation, the Coast Guard could lease non-excess lighthouse property to lessees, who would be responsible for the maintenance of the property, excluding the maintenance of the Federal aids to navigation.

Many Coast Guard lighthouse properties are currently leased to non-profit organizations, which make them available to the public for education, park, recreation, cultural or historic preservation purposes. Current authority limits leases of Coast Guard property to five years. As a practical matter, the non-profit groups operating these facilities need the assurance that they can enter into a long-term lease agreement, thereby justifying the expense of improvements, restoration, and repair. Many non-profit groups interested in leasing a lighthouse property have ready access to labor and materials needed to make improvements, but have limited financial resources and cannot afford to pay market rent. This proposal, would grant the Coast Guard the authority to enter into long-term lease agreements and ensure that lessees could afford to lease the property, while still providing substantial benefit to the government and the public via improvements and maintenance to the property.

SECTION 218. ADMINISTRATIVE, COLLECTION, AND ENFORCEMENT COSTS FOR CERTAIN FEES AND CHARGES.

Under current law, there are three statutes pursuant to which the Coast Guard collects user fees for its services. The Independent Offices Appropriations Act, 31 U.S.C. 9701, passed in 1951, is general user fee authority that applies to the entire Federal Government, including the Coast Guard. Also, under 46 U.S.C. 2110, the Secretary is required to establish user fees for services provided under subtitle II of title 46, United States Code (primarily marine safety activities, *e.g.*, inspection of certain vessels; licensing, certification and documentation of personnel, etc.). Finally, section 664 of title 14, United States Code, provides authority for the Coast Guard to establish user fees for goods and services it provides.

The purpose of this proposal is to better coordinate the statutory provisions governing fees and charges currently levied by the Coast Guard for services furnished under subtitle II of title 46 and under titles 14 and 31, United States Code, by amending titles 14 and 46.

This proposal does not establish a new user fee or seek to authorize the collection of any amounts in excess of the full (direct and indirect) costs of providing a given service for which the fee is being charged.

Currently, the Secretary is authorized to recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges associated with services provided under subtitle II of title 46 but not under section 664 of title 14. This proposal would clarify that, for fees authorized under section 664 of title 14, the Coast Guard's collection and enforcement costs resulting from the delinquent payment of fees and charges by users are included in costs authorized to be recovered, as they are under section 2110(c) of title 46; that the amounts recovered are authorized to be deposited to the general fund of the Treasury; and that the Secretary may employ a Federal, State, local, or private entity to collect the fees or charges. These are normal administrative costs and generally included in the full cost calculation when establishing the user fee.

Further, the proposal would amend title 14 and subtitle II of title 46 to define the user fee administration costs that are recoverable to include administrative, accounting, personnel, contract, equipment, supply, training, and travel expenses. It is reasonable to assume that administrative costs include the costs of accounting, administration, processing, and financial management of user fees. This includes activities such as identification, billing, collection, review, calculation, and reassessment of such fees and charges (including the costs of program review and costs of any changes to the fee or charge structure); related costs of computer hardware and software and other office equipment, supplies, and furniture; personnel, training, and travel costs; costs of compilation and analysis of data; and costs of any contract for performance of the foregoing services. Currently, the statutory provisions in title 46 and title 14 are silent on this issue.

For example, OMB Circular No. A-25 requires that each agency review user charges for the agency's programs biennially, to assure that existing charges are adjusted to reflect unanticipated changes in costs or market values. The results of this biennial review are required to be discussed in the Chief Financial Officers Annual Report required by the Chief Financial Officer Act of 1990. However, the costs of conducting these biennial recalculations for each fee and for providing adequate program administration, oversight, and review are not provided to the Coast Guard. This is but one example of Coast Guard user fee management and oversight costs that must be borne by the Coast Guard.

To address this problem, this proposal would make parallel the provisions applicable to title 46 and title 14 pertaining to user fees. The Secretary would be authorized to recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges for fees and charges authorized under title 14, as is currently authorized for title 46 fees and charges. Also, like title 46, it would insert into title 14 a provision allowing an agency to collect a fee or charge and, if it does so, require that all related costs be accounted for as reimbursable expenses and credited to the account from which expended. Lastly, for both titles, it would define what constitutes the costs of collecting a fee or charge, so that it explicitly includes reasonable administrative, personnel, contract, equipment, supply, training, and travel expenses related to administration, management, and oversight of user fees authorized by law. Importantly, this would include the

compilation and analysis of cost and user data which, in recent years, both Congress and the Executive Branch have sought to obtain from Federal agencies on a recurring basis.

TITLE III - LAW ENFORCEMENT, MARINE SAFETY AND ENVIRONMENTAL PROTECTION

SECTION 301. MARKING OF UNDERWATER WRECKS.

This proposal would authorize the Coast Guard to excuse owners of vessels, rafts, or other craft that are wrecked and sunk in a navigable channel from using lighted buoys or beacons to mark their sunken craft.

33 U.S.C. 409 requires the owner or operator of a vessel wrecked and sunk in a navigable channel to immediately mark it with a "buoy or beacon during the day and a lighted lantern at night", and to maintain the marker until the wreck is removed. In navigable channels on the Western Rivers, use of a lighted aid to mark a wreck is generally not practicable due to the fast current and floating debris common in those rivers. Lighted aids, which are larger and heavier than unlighted markers, tend to submerge in the fast current, and are pushed off station by the force of the current on debris snagged by the aid. It is largely for this reason that of the over 10,000 buoys positioned by the Coast Guard to mark navigable channels on the Western Rivers, only 12 are seasonal lighted buoys, and those are limited to pooled waters behind dams where current is not a factor. Mariners operating vessels on these rivers are accustomed to navigating with unlighted buoys. Much of this type of marking is currently performed by the Coast Guard, due to the failure of owners/operators to mark their wrecked vessels. The Coast Guard generally uses unlighted buoys for this purpose.

This proposal would amend this statute to grant the Commandant of the Coast Guard discretion to permit a sunken wreck to be marked without using a lighted buoy. There is already a regulation in place, at 33 CFR 1.01-1, which would delegate authority to exercise this discretion from the Commandant to the District Commander.

SECTION 302. PORTS AND WATERWAYS PARTNERSHIPS / COOPERATIVE VENTURES.

This proposal would authorize the Secretary to enter into partnerships and cooperative ventures with non-Federal entities to carry out Ports and Waterways Safety Act vessel operating requirements, including vessel traffic services, and would allow longer-term, 20-year, leases between the Coast Guard and such partners.

The Coast Guard granted a license to the Marine Exchange of Los Angeles/Long Beach in 1987 to occupy Coast Guard owned property. The Marine Exchange has since made improvements to the property and has installed vessel tracking radar and extensive

communications, data processing and other equipment. In 1993, Congress authorized the Coast Guard to provide personnel support to the Marine Exchange to jointly operate a Vessel Traffic Information Service. This operational partnership has been successful, and will serve as a model for future partnership ventures in other ports authorized under this proposal.

Current law limits the Coast Guard's authority to lease Coast Guard controlled property to terms not exceeding five years. The entities and individuals with whom the Coast Guard would partner in these ventures may make substantial improvements to the real property involved and significant capital investment in the equipment and infrastructure necessary for a sophisticated operation. For these cooperative ventures to be successful, the individual or entity must be assured of a viable long-term arrangement, and that the operation would not be forced to move at the expiration of a five-year term.

SECTION 303. REPORTS FROM CHARTERERS.

This proposal would authorize the Secretary to require reports from vessel charterers to ensure compliance with laws governing vessels engaged in coastwise trade and in the fisheries.

It is the responsibility of the United States Coast Guard to regulate maritime commerce. This includes confirming the qualifications of mariners and vessels engaged in coastwise trade and in the fisheries. Beginning in 1996, however, it became much more difficult to accomplish this task due to certain changes in vessel lease financing laws. These changes included permitting vessels owned by certain foreign-owned financial institutions to engage in coastwise trade if the vessels were chartered to a coastwise qualified citizen. While the Coast Guard can require owners and masters of vessels to submit certain reports to confirm the qualifications of their vessels to engage in coastwise trade and the fisheries, no similar authority exists with respect to charterers who are now operating vessels under the new lease financing laws.

The opportunity to own vessels in coastwise trade does not extend to groups that are primarily engaged in vessel operation and management, or to groups that operate foreign flag vessels in carriage of cargo for unrelated third parties. Thus, confirmation of the qualification to engage in coastwise trade and in the fisheries requires information beyond the qualification of the vessel itself. Efforts to obtain this information from charterers on vessel qualifications and on the charterer's primary business have been rebuffed. Accordingly, the Coast Guard seeks authority to require reports from charterers regarding the qualification of their vessels to engage in coastwise trade and in the fisheries.

SECTION 304. VESSEL RESPONSE PLANS FOR NON-TANK VESSELS OVER 400 GROSS TONS.

This proposal would allow the president to issue regulations requiring non-tank vessels of 400GT and greater that carry oil as fuel for main propulsion to prepare vessel response plans that are the same as the vessel response plans currently required under the Oil Pollution Act of 1990 (OPA 90) for tank vessels that carry oil in bulk as cargo.

OPA-90 has no response plan provisions related to non-tank vessels (passenger, dry bulk, container, and other commercial vessels). However, these vessels may pose a risk of significant pollution. Internationally, the International Maritime Organization imposes the same pollution response planning standards on both tankers and non-tank vessels. Several states have also enacted laws requiring response plans for non-tank vessels. Inconsistencies in applicability and scope from state to state force vessels seeking to trade between states to satisfy increasingly disparate requirements, including maintaining multiple response plans. The Federal Water Pollution Control Act, which OPA 90 amended, does not preclude states from regulating non-tank vessels, so long as the regulation does not preclude compliance with Federal requirements. Ongoing discussions with state response agencies indicate state-level support for this type of legislation.

Data indicate that since enactment of OPA-90, some of the reduction in quantity spilled and impact of oil spilled can be directly attributed to increased preparedness fostered by the Vessel Response Plan regulations. However, spill data indicate that the volume of oil spilled from non-tank vessels was higher in 1997 and 1998 than the volume spilled from tank vessels in each of those years.

Tank vessel owners contribute to the support of a nationwide network of spill response contractors, who may not be available to support non-tank vessel response needs because of an existing contractual obligation to the tank vessel owners. This lack of committed resources leaves the nation vulnerable to lessened or inadequate response to a major oil release from a non-tank vessel.

Currently, the oil production, transportation, and storage industries bear nearly the entire burden of maintaining the nation's oil spill response industry. However, non-tank vessels may carry as much or more oil than many small tank vessels, yet they are not required to plan for a spill emergency and may have no response resources available in the event of a spill. This proposal would spread the cost of maintaining private spill response infrastructure in the U.S. to a much larger portion of the shipping industry while reducing the risk of spills from non-tank vessels.

SECTION 305. ADDITION OF NOXIOUS LIQUID SUBSTANCES TO THE LIST OF HAZARDOUS SUBSTANCES FOR WHICH THE COAST GUARD MAY REQUIRE A RESPONSE PLAN.

This proposal would amend the Oil Pollution Act of 1990 (OPA 90) to include within the group of hazardous substances for which the Coast Guard may require response plans the list of Noxious Liquid Substances (NLSs) under the International Convention for the

Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 (MARPOL 73/78).

OPA 90 mandated that the President issue regulations (subsequently delegated to the Coast Guard) requiring owners or operators of vessels and facilities to prepare response plans for incidents involving oil and hazardous substances. The list of hazardous substances covered by OPA 90 includes only those defined as such by the U.S. Environmental Protection Agency (EPA) under the Federal Water Pollution Control Act (FWPCA).

The current list of hazardous substances as maintained by EPA does not include over 70% of current maritime chemical cargoes, including cargoes the Coast Guard considers to present the most imminent and substantial danger to the marine environment.

Because only EPA is able to amend the list of hazardous substances, and EPA has declined to do so, the Coast Guard's vessel and facility response plan regulations can only be applied to less than 30% of the cargoes the Coast Guard believes should be covered, crippling the effectiveness of the Coast Guard's regulations.

Also, the list of hazardous substances designated by the EPA is not in accord with the list of maritime cargoes under analogous international requirements. This disagreement arbitrarily imposes response plan burdens on some operators while excluding others, regardless of the actual threat to the marine environment.

Adopted in July 1999, with entry into force January 1, 2001, are the international treaty requirements of the new Regulation 16 in Annex II of MARPOL 73/78, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978. The new Regulation 16 requires certain owners or operators of vessels, certified to carry Noxious Liquid Substances (NLSs) in bulk, to have pollution plans onboard. These plans must receive the approval of the vessels' flag administrations by January 1, 2003. Of the 782 internationally recognized NLSs, the EPA list encompasses only 134 cargoes, and, those 134 cargoes do not even represent the cargoes posing the greatest threat to the marine environment.

Since the publication of the EPA's Final Rule in 1978, the list of designated hazardous substances has undergone only two substantive updates, both over twenty years old. The first update was the addition of 28 substances (44 FR 10266 (16 February 1979)), and the second was the removal of two substances (44 FR 65400 (13 November 1979)). In contrast, the IMO's NLS list, first published in 1983, undergoes continuous updating and has been significantly amended a total of five times. The process implemented by the IMO addresses the changing threat to the marine environment posed by new cargoes and is based on the most recent scientific and toxicological data. This proposal, would harmonize the domestic list of regulated bulk cargoes with the internationally maintained NLS list. The NLS list reflects current maritime cargoes.

This proposal would lessen the burden on U.S. industry by harmonizing international and domestic lists. The authority given by this change will allow the Coast Guard to require

response plans for those substances that present an imminent and substantial danger to the public health or welfare, including both danger to people as well as fish, shellfish, wildlife, shorelines, and beaches.

SECTION 306. REVISION OF TEMPORARY SUSPENSION CRITERIA IN SUSPENSION AND REVOCATION (S&R) CASES.

Title 46, U.S.C., chapter 77, contains the provisions governing Coast Guard suspension and revocation proceedings against a merchant mariner's credentials (MMCs). Section 7702(d) prescribes the criteria the Coast Guard must establish in order to initiate a temporary suspension. However, because the phrase "when acting under the authority of that license, certificate, or document" appears at the end of subsection (d)(1), this "lead-in" phrase applies to all of subparagraph (A) and subparagraph (B) – clauses (i), (ii), and (iii). As currently written, the section requires that a mariner be acting under the authority of the MMC while convicted of an offense that would prevent the renewal or re-issuance of their MMC [(d)(1)(B)(ii)] or a National Driver Register Act (NDRA) offense [(d)(1)(B)(iii)]. Instead, it should only apply to the clause (i). Also, there is no express authority to temporarily suspend an MMC if the holder threatens the security of a vessel or the port.

It is not possible for someone to be convicted of a NDRA offense while acting under the authority of their MMC. For example, it would be impossible to operate a motor vehicle under the influence of alcohol, an NDRA offense, while simultaneously acting under the authority of an MMC on a vessel. Furthermore, subsection (d)(1) is inconsistent with the bases for suspension and revocation proceedings enumerated under section 7703, which only requires the mariner to be a "holder of" an MMC for NDRA conviction cases and any other cases involving convictions that would prevent the renewal or re-issuance of an MMC. Although almost certainly not the intent of the drafters, the text creates some confusion regarding the enforceability of this provision.

This legislative proposal would structure section 7702(d) so that it parallels section 7703. It would clarify the Coast Guard's authority to temporarily suspend a merchant mariner's credential (MMC), where the mariner is convicted of a National Driver Register Act (NDRA) offense. The result would be to rectify what the Coast Guard views as a technical drafting error in the existing statute, which creates a potential loophole in the law. It would also authorize the Secretary to temporarily suspend an MMC if there is probable cause to believe that the holder is a security threat.

Congress has previously indicated that it wants the Coast Guard to take enforcement action against the MMCs of mariners who are convicted of disqualifying offenses. By removing ambiguity and confusion from the statute, this legislative proposal will allow the Coast Guard to more aggressively and effectively enforce this provision. This will result in higher levels of maritime safety, security, and environmental protection, because the Coast Guard will be better equipped to maintain the standards that Congress has set for professional mariners.

SECTION 307. REVISION OF BASES FOR SUSPENSION & REVOCATION (S&R) CASES.

Title 46 U.S.C. Chapter 77 lays out the provisions for Coast Guard suspension and revocation proceedings against a merchant mariner's credentials (MMC). Section 7703(1)(B) requires mariners to be "acting under the authority of" their Merchant Mariner's Credential (MMC) when they commit an act of incompetence before the Coast Guard can initiate suspension and revocation proceedings. Therefore, if the Coast Guard has evidence that an individual is either physically or professionally incompetent, the agency must wait until the mariner actually commits an act of incompetence while acting under the authority of their MMC before taking action. This situation exposes the maritime industry and the environment to unnecessary risks. Additionally, there is no express authority to suspend or revoke an MMC if the holder threatens the security of a vessel or the port.

To correct the situation, this legislative proposal changes incompetence from an "acting under the authority of" offense to a "holder of" offense. This will allow the Coast Guard to initiate a suspension and revocation proceeding without having to wait for a marine casualty to occur. The Coast Guard will be able to take action as soon as it has sufficient evidence of incompetence but before a marine casualty has occurred thereby potentially saving lives, property and the environment. Professional incompetence could be established through either a single act or omission or a series of deficient acts or omissions. It also adds security threat as a basis for which the Secretary may suspend or revoke an MMC.

SECTION 308. REMOVAL OF MANDATORY REVOCATION FOR PROVED DRUG CONVICTIONS IN SUSPENSION & REVOCATION (S&R) CASES.

Title 46 U.S.C. Chapter 77 lays out the provisions for Coast Guard suspension and revocation proceedings against a merchant mariner's credentials. Section 7704 addresses dangerous drugs as grounds for revocation. While revocation is not mandated for the use of dangerous drugs (under 7704 (c)), any drug law conviction (under 7704(b)) requires an Administrative Law Judge (ALJ) to revoke a credential if the case is proved.

In 1994, the Coast Guard began using Settlement Agreements to resolve suspension and revocation cases without a hearing. These have been particularly successful in cases involving drug use where the ALJ need not revoke credentials if the holder provides satisfactory proof of cure. However, due to the restrictive language of Section 7704(b), the Coast Guard is prohibited from using Settlement Agreements in dangerous drug law conviction cases. This legislative change will allow the ALJ discretion to suspend a mariner's credentials in appropriate cases thereby allowing the use of Settlement Agreements to resolve cases involving minor drug convictions.

By granting ALJs discretion to approve settlement agreements this proposal will improve the administration of the MMC program by removing the requirement for a hearing and suspension in every case involving a drug conviction. This will allow minor cases to be settled quickly leaving resources available to focus on more serious cases, resulting in higher levels of maritime safety and environmental protection, because the Coast Guard will be able to focus resources on those cases that represent the greatest threat to maritime safety and the environment.

SEC. 309. DELETION OF THUMBPRINT REQUIREMENT FOR MERCHANT MARINERS' DOCUMENTS.

This proposed legislation would delete the requirement for a thumbprint to be placed on the merchant mariner's document (MMD). The original purpose for the thumbprint is unclear. Until 1994, the MMD was a permanent credential issued to the mariner. It did not expire. Perhaps the thumbprint was intended to serve as a form of permanent identification since the photograph of the MMD holder was likely to become less of a reliable identifier as the holder aged. If so, that purpose is no longer as pertinent since the Oil Pollution Act of 1990 required that MMDs be issued with a five-year term and the photographs are therefore never more than five years old. The Coast Guard's Mariner Licensing and Documentation Program is not aware of a single instance where the thumbprint has been used to confirm identity. It has not been used to check criminal backgrounds. As a practical matter, the technology in place for reproducing the thumbprint on the MMD currently in use is inadequate to provide the detail necessary for a complete fingerprint analysis.

The result of this change will be to provide the Coast Guard more space on the MMD to describe mariner qualifications. The change from a hand-typed paper to a computer generated "driver's license" style MMD resulted in a reduction in the physical size of the MMD and less space to describe mariner qualifications. The shortage of space to adequately describe mariner qualifications has been exacerbated by the implementation of the International Convention on Standards for Training, Certification, and Watchkeeping for Seafarers (STCW), which has required additional wording on many MMDs. Removal of the thumbprint will provide space for additional wording.

If this proposal is enacted, a regulatory project will be needed to amend 46 C.F.R. §12.02-17, to delete the regulatory requirement that when a mariner applies for a MMD, he or she must impress his/her left thumbprint on the document or impress his/her right thumbprint if his/her left thumb is missing. Additionally, because the change involves the alteration of a standard form, the National Maritime Center will need to file a Paperwork Reduction Act form approval request with the Office of Management and Budget outlining changes to the MMD and analyzing the impact on the regulated public. Therefore, implementation of the proposal, if enacted, may take some time.

SECTION 310. RECORDS OF MERCHANT MARINERS' DOCUMENTS.

This proposal would strike the last sentence of section 7319 of title 46, U.S. Code, in order to align the record protection and release policies applicable to merchant mariners' documents with those of the Privacy Act, 5 U.S.C.§552a, and Freedom of Information Act (FOIA), 5 U.S.C.§552. The current prohibition on "general or public inspection" contained in section 7319 results in excessive withholding of information and inconsistent policies for the treatment of records relating to documented mariners and those relating to licensed mariners.

The prohibition against "general or public inspection" of mariners' documents appears to have been first enacted in 1937, 37 years before the enactment of the Privacy Act, but it is not known what prompted the prohibition. No similar prohibition exists for licensed mariners. The effect of the current language has been that individuals with legitimate reasons for accessing Merchant Mariner Document (MMD) information have been denied access to that information. For example, even the most basic request to verify a mariner's qualifications is refused by the National Maritime Center (NMC), frustrating efforts by employers to hire mariners and arguably conflicting with U.S. treaty obligations with the International Maritime Organization which identifies the NMC as the source for mariner qualification information. Indeed, agency policies and guidelines implementing the statutory prohibition require the NMC to refuse even to acknowledge whether a mariner is documented. The referenced language also requires the NMC to refuse requests from family members and historians seeking information about deceased mariners, even upon presentation of a valid death certificate and despite the fact that no privacy interest is furthered by the denial.

The Coast Guard does not know of any case law or other legal authority that provides a definition for "records not open to general or public inspection". This has led to confusion in the application of the statute. Finally, the prohibition has led to the development of inconsistent release standards between documented mariners, whose documents are entirely barred from "general or public inspection", and licensed mariners, whose records may be released within the protections of the Privacy Act. There is no logical reason for this inconsistency. Enactment of this proposal permits the establishment and implementation of consistent policies for responses to requests for MMD information.

SECTION 311. MERCHANT MARINER DOCUMENTATION REQUIREMENTS.

Section 8701 of title 46, U.S. Code, requires all personnel employed on board United States-flag merchant vessels of at least 100 gross tons to have a Merchant Mariner's Document (MMD), issued by the Coast Guard with some limited exceptions. The MMD requirement includes personnel employed as waiters, cooks, dealers, entertainers, cleaning crews, and other personnel providing services for the vessel's passengers.

This proposal would amend section 8701(a) by adding a new paragraph (9) (while redesignating the existing paragraph (9) as paragraph (10)), which would exempt from the MMD requirement entertainment personnel on board passenger vessels on domestic voyages, if these individuals have no navigation or safety-related duties, and as long as they have an aggregate of no more than 30 days service on passenger vessels in a calendar year. Also, the provision would amend section 7302 of title 46 to authorize the Secretary to issue an interim merchant mariner's document, valid for up to 120 days, for existing documented mariners who are seeking to renew or obtain a supplemental endorsement on their MMD, as well as other categories of service personnel on passenger vessels on domestic voyages who are not otherwise exempted from the MMD requirements, as long as these individuals have no navigation or safety-related duties.

Exemption from MMDs for Certain Personnel

This proposal would primarily affect gaming industry vessels, as there has been a great growth in the number of gaming vessels (now over 46) since the industry was started in 1988. It also would affect ferries and any other U.S. passenger vessels of at least 100 gross tons, but not small passenger vessels. Since the MMD requirements in section 8701 only apply to certain vessels of at least 100 gross tons and small passenger vessels are, by definition, less than 100 gross tons, those vessels would not be affected by this proposal. We note that the great majority of cruise ships are foreign flag vessels and they also would not be affected by this provision. It would apply only to U.S. passenger vessels "not engaged in a foreign voyage". Accordingly, the section would not apply to a vessel on a voyage between a port in the United States (as defined in 46 U.S.C. 2101) and a port in a foreign country (except a port in Canada, Mexico, or the West Indies). All other voyages by U.S. passenger vessels would be covered under this proposal.

As stated above, the proposal would exempt entertainment personnel with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, crew, cargo, or passengers, from having to obtain an MMD, as long as their cumulative sea service does not exceed 30 days in a given calendar year (whether accumulated on a single passenger vessel or multiple passenger vessels). Typically, entertainment staff is employed on passenger vessels for very short durations and are virtually never assigned any responsibilities for the safety of the vessel or its passengers. Many entertainers never return to passenger vessel service after their initial contract on a passenger vessel. This provision would eliminate the administrative burden of documenting these persons, who are not assigned as integral members of the crew. These "temporary" entertainers would only be exempt from documentation if, and only if, they have no safety-related duties, including emergency duties. If an individual were assigned an emergency duty, even if merely to watch a stairwell during a fire or other emergency, he or she would still be required to have an MMD.

This amendment is proposed because issuing an MMD to entertainment personnel who are not directly involved with either routine vessel operations or response to an emergency does not significantly enhance maritime safety. Moreover, employers of such personnel, especially on gaming vessels, typically ensure that the service personnel hired

do not pose any risks that would be noted by the Coast Guard through the MMD application process. The growth of the gaming vessel industry has increased the workloads at the Coast Guard Regional Exam Centers (REC) to the extent that merchant mariners have been delayed in obtaining their licenses and MMDs because of the influx of the additional service personnel. Also, gaming vessels have a high turnover rate of their service personnel, requiring more new MMDs to be issued than would usually result from that number of other types of vessels. In the recent past, the main problem area for overburdened Regional Exam Centers (RECs) has been the Great Lakes region – specifically Toledo, Ohio. However, a number of new coastwise passenger vessels are under construction and are scheduled for delivery soon, for service out of the homeports of Miami, Florida and Honolulu, Hawaii. It is highly likely that other areas also may become candidates for new gaming/passenger vessels, which will increase the workload for other Coast Guard RECs.

This proposal will result in a slight savings to the Coast Guard by reducing the need to increase the resources devoted to MMD processing. However, the amount of that potential savings is not precisely ascertainable. At the Toledo REC, the level of MMD processing would return to pre-gaming industry levels, which would allow the Coast Guard to avoid having to add three employees to the MMD issuing process. Enacting this provision will foster more timely service to merchant mariners, reduce the hiring delays experienced by industry under the current regime, reduce the need to devote more resources to MMD operations, and allow the Coast Guard to focus on the merchant mariners who are critical to maritime safety.

Interim MMDs

This proposal would also authorize the Secretary of the Department in which the Coast Guard is operating to issue interim merchant mariner's documents that are valid for up to 120 days and are not renewable. It is intended to improve the timeliness of issuing credentials to mariners employed as service personnel, such as long-term entertainment staff, gaming personnel, croupiers, and wait and hotel staff working on a passenger vessel not engaged in a foreign voyage, provided the individuals are assigned no duties, including emergency duties, related to navigation or safety of the vessel, its crew, cargo, or passengers. It would also permit the issuance of an interim merchant mariner's document valid for up to 120 days for any mariner who is seeking either renewal of an existing, valid MMD or who is becoming eligible for a "supplemental endorsement" (in a qualified professional rating) to his or her MMD issued under this section.

The Coast Guard performs licensing and certification at 17 Regional Examination Centers (RECs) and four monitoring units, which issue over 55,000 mariners' credentials annually. Because of the steady annual growth in the demand for mariners' credentials, the Coast Guard needs to maximize efficiency and quality of service to merchant mariners. This provision will enable the Coast Guard to better serve the merchant mariner public and to better manage the REC workload.

SEC. 312. ELECTRONIC FILING OF COMMERCIAL INSTRUMENTS FOR VESSELS.

Currently, a bill of sale, conveyance, mortgage, assignment, or related instrument pertaining to any documented vessel must be filed with the Secretary of Transportation to be effective. Electronic filing of such instruments was authorized beginning in 1996. However, in order for the electronic filing to be effective, an original of the instrument must be filed with the Secretary of Transportation within 10 days.

This proposal would amend section 31321 of title 46, U.S. Code, to remove the requirement for filing an original commercial instrument within ten days of the electronic filing of the instrument.

This proposal is consistent with recent efforts by the Federal government to facilitate electronic commerce. The Electronic Signatures in Global and National Commerce Act, P.L. 106-229, provides that a signature, contract, or other record relating to any transaction in or affecting interstate or foreign commerce may not be denied legal effect solely because it is in electronic form. This proposal would eliminate any confusion regarding the effectiveness of electronic filings for vessel documentation under title 46 by eliminating the express requirement that an original instrument be filed. Further, it is expected that it will encourage electronic filing of commercial instruments with the Secretary of Transportation, and reduce paperwork and delays in documenting vessels. It is also consistent with OMB Guidance to federal agencies regarding implementation of the Government Paperwork Elimination Act which requires that federal agencies allow individuals the option of dealing with a agency electronically. Finally, it will provide some cost savings to the Coast Guard by eliminating the need to confirm that the instrument that is filed is identical to that which has been electronically filed.

SECTION 313. TEMPORARY CERTIFICATES OF DOCUMENTATION FOR RECREATIONAL VESSELS.

This proposal would authorize the Secretary of Transportation to issue temporary certificates of documentation, and to delegate to private third parties the authority to issue temporary certificates of documentation (COD), for recreational vessels. The issuance of temporary CODs by private third parties is desirable because all documented vessels (including recreational vessels) equipped with propelling machinery are required at all times to be numbered by the state of principal use or to have a current COD. When documented vessels are sold, their documents cease to be valid for purposes of vessel operation. New vessels may not be legally operated without a COD or state-issued Certificate of Number. The only legal way to operate a vessel while obtaining the necessary paperwork is for the owner to obtain a Certificate of Number from a state, which, depending where the vessel happens to be, can be very difficult.

By allowing private third parties to issue temporary CODs for recreational vessels, this provision will enable recreational vessel owners to transact sales with delegated private

entities, often convenient to their location, and obtain a temporary COD. Once the owner of a recreational vessel has a temporary COD (which can be renewed), he or she no longer must deal with the Coast Guard's National Vessel Documentation Center (NVDC) on a time critical basis. Because the great majority of CODs issued are for recreational vessels, this provision should ease the workload at the NVDC and free the NVDC to issue these CODs at a more measured pace than must occur now. This should enable the NVDC to process CODs for commercial vessels more expeditiously. If this delegation to private third parties for issuing temporary CODs for recreational vessels proves as helpful as expected, the Coast Guard would seek comparable authority at a later date for issuing temporary CODs to commercial vessels as well.

Under this proposal, private organizations, following specific guidelines established by the Coast Guard and under the Coast Guard's oversight, would evaluate applicants for temporary CODs for recreational vessels in accordance with the applicable statutory and regulatory standards. The private third parties delegated the authority under proposed 46 U.S.C. 12103a, would check the forms currently required to be submitted for a COD to see whether the applicant for the temporary COD for the recreational vessel qualifies as a U.S. citizen. By completing the appropriate form issued under 46 CFR 67.43, Evidence of Citizenship, the applicant will have established rebuttable evidence of citizenship.

An owner of a recreational vessel meeting prescribed standards would immediately be issued a temporary COD, which would be valid for up to 30 days. The temporary COD and supporting information would then be forwarded to the NVDC. The NVDC would review the application, the temporary COD, and other information, and would issue a permanent COD if there are no unresolved problems.

Proponents of issuing temporary CODs by private persons include state authorities, financial institutions and maritime lawyers, vessel dealers, private vessel documentation firms, and industry groups. At present, many vessels are operated illegally while waiting for issuance of a document. If an undocumented, unnumbered vessel is involved in a casualty, there are no records of ownership to provide information to search and rescue groups or to help establish liability. In other cases, vessels are numbered and titled in a state, creating an unnecessary burden for both vessel owners and the states. In addition, this practice increases the opportunity for fraud, since vessels can then be mortgaged under two separate systems without the knowledge of mortgagees.

Authorizing third parties to issue temporary CODs is not intended to change the rights or obligations of the recreational vessel owner or the Government. The temporary COD would confer the same rights and privileges as a permanent COD issued by the Coast Guard. If any discrepancies in the application for a temporary COD forwarded to the Coast Guard by the private organization were noted by the NVDC, a permanent COD would not be issued. In these cases, the temporary COD would be voided and the vessel owner would be notified.

Under this proposal, the Coast Guard would develop regulations to ensure quality of service, prescribing standards for private entities in order to be qualified to perform the documentation function on behalf of the Coast Guard. It is anticipated that the standards

would be high, perhaps including verification by a quality standards organization. All evaluations performed by a private entity would be subject to Coast Guard oversight and verification for completeness and accuracy. In the case of complex applications or when an application does not fit within the established guidelines, the Coast Guard would process the application. For recreational vessel owners who choose not to have a private organization issue their temporary CODs, the NVDC would continue to do so. At this time the Coast Guard has not decided how many private entities would be delegated the authority to issue temporary recreational vessel CODs.

This authorization to delegate to private third parties would not diminish the fees currently collected for issuing CODs to recreational vessels, since the Coast Guard would continue to issue permanent CODs, as it does today. However, when recreational vessel owners avail themselves of the temporary COD, they could expect to pay a separate fee for the service. The amount of the fee for the temporary COD would be set by the private third parties.

SECTION 314. EXEMPTION OF UNMANNED BARGES FROM CERTAIN CITIZENSHIP REQUIREMENTS.

This proposal would amend section 12110(d) of title 46 by adding an exemption from the citizenship requirement for unmanned barges.

Currently under 46 U.S.C. 12110(d), all documented vessels, other than vessels with a recreational endorsement, must be placed under the command of a citizen of the United States. This requirement applies to both manned and unmanned barges. However, when a U.S. barge is in service with a tug not under the operational control of a U.S. citizen, this requirement places a difficult burden on the barge owner.

To comply with the U.S. citizen in command requirement, a U.S. citizen deckhand is sometimes designated as the "barge master" on the towing vessel, so that the unmanned barge will be "under the command of" a U.S. citizen. This solution is an artificial one that lends no real value, since the "barge master" is not in command as a practical matter, having no control over the tug. Rather, it is the master of the tug who has control of both the tug and the barge. It is the master of the tug who generally makes the decisions concerning navigation, crew hiring and firing, discipline, and compliance with laws and regulations. Designating a "barge master" on board the tug does not give decision-making authority to a U.S. citizen, but it could burden that person with the consequences of the tug operator's actions.

The penalty for violating section 12110(d) is that documented vessels, except those with only a recreational endorsement, placed under the command of a foreign citizen are subject to seizure and forfeiture to the United States Government (46 U.S.C. 12122(b)(6)). Strict enforcement of this requirement would effectively prohibit owners of U.S. documented barges from bare boat chartering their vessels to foreign interests unless the barge is towed by a U.S.-flag tug or a U.S. citizen is aboard any foreign tug that tows the barge and in command.

Lighter Aboard Ship (LASH) barges discharged in foreign ports cannot comply with this requirement unless the vessel carrying the LASH barges also carries at least one U.S. citizen who would leave the LASH carrier to accompany the barges when discharged. We do not believe that Congress intended to create this type of economic hardship for U.S. owners. In addition, the Coast Guard does not have the resources to enforce this requirement all over the world. However, without this amendment, the present practice of requiring a U.S. citizen aboard a foreign-flag tug towing an unmanned U.S. documented vessel must continue.

SECTION 315. WING-IN-GROUND CRAFT.

This proposal would grant the Coast Guard statutory authority to regulate wing-in-ground (WIG) craft and make them subject to inspection as small passenger vessels. This highly experimental type of craft creates new challenges for maritime safety officials, including the United States Coast Guard. WIG craft are "vessels" that operate just above the surface of the water on a cushion of air. Unlike conventional vessels, they can operate at high speed (often in excess of 100 knots) and present additional risk based on their design, speed, interactions with other vessels when operating on the water. These craft can operate just above the surface of ground, as well. Further, some of these craft are capable of jumping up to considerable altitudes or possibly even sustaining free flight. At this time, none are in operation in the U.S.

The current definition of "vessel", in 1 U.S.C. § 3, is sufficiently broad to include wing-in-ground craft" – every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water". Therefore, WIG craft could fall within the Coast Guard's current regulatory regime as uninspected passenger vessels if less than 100 gross tons and carrying no more than 6 passengers (including at least one passenger for hire).

This proposal would, nonetheless, amend the definition of "small passenger vessel" in 46 U.S.C. §2101(35) to include wing-in-ground craft that carry at least one passenger for hire, regardless of tonnage, and it would add to the title 46 definitions a definition of "wing-in-ground craft" –a vessel that is capable of operating completely above the surface of the water on a dynamic air cushion created by aerodynamic lift due to the ground effect between the vessel and the water's surface. As a result, these craft would be categorized as small passenger vessels if they carry at least one passenger for hire, and thus make them subject to inspection. By including WIG craft in the definition of "small passenger vessel" the Coast Guard would be authorized to regulate them under flexible inspection standards, and would make it possible to incorporate future International Maritime Organization (IMO) standards into the Coast Guard's regulatory scheme.

The Federal Aviation Administration does not consider wing-in-ground craft to be within its statutory authority. The International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO) have agreed that the IMO would be solely responsible for WIG craft operation in the "ground-effect" mode (over water), the

ICAO would be solely responsible for their operation in flight mode, and in "jump mode," operation would be dealt with by both organizations.

The Coast Guard would have jurisdiction over WIG craft operating in the ground-effect mode over water. The Coast Guard is awaiting the development of regulatory standards by other countries that currently have WIG craft in operation before recommending that the U.S. address this potential regulatory aspect. Due to the duality of jurisdiction, this proposal may lend itself to implementation using a DOT sponsored intermodal regulation.

This legislative proposal, if enacted, would provide explicit authority to the Coast Guard to inspect and regulate this new generation of waterborne craft. The Coast Guard would use its existing marine licensing and documentation scheme and equivalency provisions of current regulations, as needed. This approach will provide a method to incorporate international standards into the regulatory scheme, as they are developed. The result would be increased levels of safety for passengers on board these vessels and for surrounding conventional vessels, once WIG craft are put into service in the United States.

SECTION 316. MARINE CASUALTY INVESTIGATIONS INVOLVING FOREIGN VESSELS.

The Coast Guard's authority to investigate marine casualties stems from 46 U.S.C. 6301, which directs the Secretary to prescribe regulations for the investigation of marine casualties "under this part" [Part D of Subtitle II – Chapters 61 and 63 of Title 46]. Section 6101 prescribes the types of marine casualties for which reporting is required and identifies situations involving foreign vessels in which the reporting and investigation provisions of Part D apply. As it applies to foreign vessels, marine casualty investigation authority is limited to casualties occurring within the territorial sea of the United States (generally 12 miles offshore), except for two extra-territorial situations described in Section 6101(d) and (e), where the casualty involves:

a. Foreign tank vessels involved in certain types of marine casualties in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone, which generally extends 200 miles from the baseline. (Sec. 6101(d)(2)); or

b. Certain foreign passenger vessels if the marine casualty involves a U.S. citizen. (Sec. 6101(e)),

International conventions such as the International Convention for the Safety of Life at Sea, 1974 (SOLAS), the International Convention of Load Lines, 1966 (ILLC), and the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), require flag states to investigate marine casualties. The international community increasingly has become aware of the benefits of cooperating in casualty investigations, given the international nature of shipping and the fact that flag state interests often

overlap the interests of port and coastal states. As a result, a series of International Maritime Organization (IMO) resolutions have addressed international cooperation in conducting marine casualty investigations.

IMO Resolution A.849(20) adopted the IMO Code for the Investigation of Marine Casualties and Incidents (the Code). This Code provides a standard international approach to investigations and enhances existing cooperation frameworks. The Code is strongly supported by the United States, and the Coast Guard has implemented the Code to the maximum extent possible under its existing statutory authorities. Many valuable cooperative investigations have resulted in the last ten years.

The Code provides that Substantially Interested States (SISs) --generally those states with a significant interest in the casualty by reason of the casualty's location, effects on the State's environment, citizens affected, or other circumstances -- may, in cooperation with the Lead Investigative State (LIS), as determined by agreement of the SISs, take part in marine casualty investigations.

However, because of the territorial limitation in the Coast Guard's current statutory investigation authority, the Coast Guard can not conduct, or exercise investigative authority in, such an investigation outside the U.S. territorial seas unless one of the two limited extraterritorial provisions in the statute applies. Recently, the territorial limitations inherent in Section 6101 prevented the Coast Guard from conducting investigations of two marine casualties in which the United States had a substantial interest. In one case, Panama requested that the United States assist as a Substantially Interested State in the interview of crew but because the incident did not occur within the 12-mile limit of the U.S. territorial seas, the Coast Guard lacked domestic authority to subpoena evidence or compel testimony. The master refused to testify while on U.S. soil, and both the Panamanian and assisting Coast Guard Investigating Officers lacked any authority to compel his assistance. In the second case, the Coast Guard conducted a massive search and rescue operation related to the sinking of the M/V ANITA, a Belizian cargo ship which routinely carried cargo between Miami and Caribbean ports. Transiting to Haiti from Miami, the ANITA sank 45 miles south of Miami. Coast Guard searchers recovered debris, but none of the 10 people aboard survived. The Coast Guard responded to the resulting oil spill. Belize requested U.S. assistance under the IMO Code, requesting the Coast Guard take investigative lead with the U.S.-based operating company and vessel agents in Miami. Coast Guard investigators lacked authority and therefore declined to lead the investigation.

In each of these cases the United States had a significant interest in the casualty, including reviewing the efficacy of certain treaties and the Coast Guard's Port State Control Program, but lacked the tools to assist meaningfully in the investigation of the casualty.

This proposal would amend Section 6101 of title 46, U.S. Code, to authorize the Coast Guard specifically to conduct marine casualty investigations involving foreign vessels, consistent with international law and the provisions of the IMO Code for the